

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON**

**ROGER DWAYNE SMITH,**

**Plaintiff,**

**v.**

**Case No. 2:14-cv-17001**

**JOSHUA HYPES, et al.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

Pending before the court are the plaintiff's Motion to Direct Defendants Shanna Coleman, Meredith Smith and Sherrill Snyder to Answer Plaintiff's Complaint (ECF No. 27) and a Motion to Set Aside Entry of Default (ECF No. 39) filed by defendants Coleman, Smith and Snyder.

On May 27, 2014, the plaintiff filed a Complaint and paid the applicable \$400 filing fee. On May 29, 2014, summonses for each of the defendants were issued and served by certified mail, return receipt requested. According to the docket sheet, on June 6, 2014, return receipts were docketed indicating that defendants Shanna Coleman, Meredith Smith and Sherrill Snyder signed for and received their service packets on or about June 3, 2014. (ECF Nos. 8-10). Consequently, Answers or other responsive pleadings to the Complaint were due by June 24, 2014. However, no responses of any kind were filed by defendants Shanna Coleman, Meredith Smith or Sherrill Snyder by that date.

No responses having been received from defendants Coleman, Smith and Snyder, on September 30, 2014, the plaintiff filed a Motion to Direct Defendants Shanna Coleman, Meredith Smith and Sherrill Snyder to Answer Plaintiff's Complaint (ECF No. 27). Then, on October 30, 2014, the undersigned entered an Order directing the Clerk to enter default against defendants Coleman, Smith and Snyder, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. (ECF No. 32).

On November 7, 2014, defendants Coleman, Smith and Snyder, by counsel, filed a Motion to Set Aside Entry of Default (ECF No. 39) and a Memorandum of Law in support thereof (ECF No. 40). The Memorandum of Law indicates that these defendants were served with process at their place of business, Psimed Corrections, LLC, on June 3, 2014. However, because the allegations in the Complaint concern conduct by these defendants that arose within the scope of their employment, they turned the Summonses and Complaint over to their employer, for handling by an attorney, and no timely response was made. (ECF No. 40 at 2).

Upon being advised by the court that default had been entered against them, these defendants took immediate steps to employ counsel to represent their interests, and the instant Motion to Set Aside Entry of Default (ECF No. 39) was filed. As noted in the Memorandum of Law filed by these defendants, Rule 55(c) of the Federal Rules of Civil Procedure permits the setting aside of an entry of default for good cause. Fed. R. Civ. P. 55(c). (ECF No. 40 at 3). The Memorandum of Law further states:

Pursuant to *Rasmussen v. American Nat. Red Cross*, 155 F.R.D. 549 (S. D. W. Va. 1994), where default has been entered but judgment has not, a Motion to Set Aside Default is governed by a liberal good cause standard rather than by the more restrictive standard for relief from judgment.

(*Id.* at 3). Defendants Coleman, Smith and Snyder contend that good cause has been shown to set aside the entry of default, that no prejudice has occurred to the plaintiff as a result of the short delay, and that this matter should be decided on its merits as opposed to a technical default. (*Id.* at 3-4).

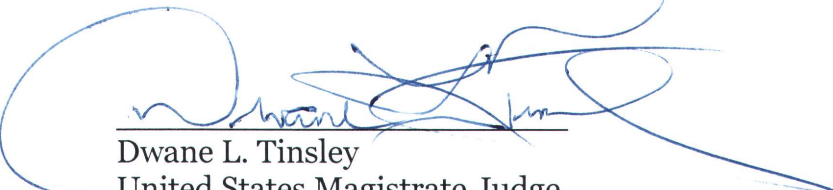
On November 18, 2014, the plaintiff filed a Response to the Motion to Set Aside Entry of Default (ECF No. 42) indicating that he does not oppose the defendants' motion. On December 18, 2014, defendants Coleman, Smith and Snyder filed a Reply (ECF No. 53) which reiterates the fact that the plaintiff does not oppose the Motion to Set Aside Entry of Default and further states that these defendants have filed an Answer to the Complaint (ECF No. 54), in order to prevent any further delay in the proceedings.

For good cause shown, it is hereby **ORDERED** that the unopposed Motion to Set Aside Entry of Default filed by defendants Shanna Coleman, Meredith Smith and Sherrill Snyder (ECF No. 39) is **GRANTED**, and the entry of default against these defendants is hereby set aside. It is further **ORDERED** that, in light of the filing of an Answer by these defendants on December 18, 2014, the plaintiff's Motion to Direct Defendants Shanna Coleman, Meredith Smith and Sherrill Snyder to Answer Plaintiff's Complaint (ECF No. 27) is **DENIED AS MOOT**.

A Time Frame Order concerning additional proceedings in this matter will be separately entered by the court.

The Clerk is directed to mail a copy of this Memorandum Opinion and Order to the plaintiff and to transmit a copy to counsel of record.

ENTER: January 23, 2015

  
Dwane L. Tinsley  
United States Magistrate Judge